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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UN4 PRODUCTIONS, INC.,

11 Plaintiff,

12 v.
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14 MADISON PALMER, *et al.*,

15 Defendants.
16

Case No. C17-0785RSL

ORDER DIRECTING ENTRY OF
DEFAULT JUDGMENT AGAINST
MORTEDHA AL-SULTAN

17 This matter comes before the Court on plaintiff UN4's motion for default
18 judgment against defendant Mortedha Al-Sultan. Dkt. #132. Having reviewed the
19 relevant briefing and the remainder of the record, the Court finds as follows:
20

21 **I. BACKGROUND**

22 This motion for default judgment is just one of the more than one hundred
23 default judgment motions filed by plaintiff's counsel in twenty-six cases before the
24 undersigned. All of the cases assert essentially the same causes of action based on
25 remarkably similar allegations, although the motion picture at issue, the owner of the
26 copyright, and the defendants vary. For purposes of this motion, UN4 alleges that 60
27 individual defendants unlawfully infringed its exclusive copyright to the motion picture
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1 *Boyka Undisputed 4*, which it developed and produced, by copying and distributing the
2 film over the Internet through a peer-to-peer network using the BitTorrent protocol.
3 Plaintiff served internet service providers (“ISP”s) with subpoenas in order to identify
4 the alleged infringers. Amended complaints identifying defendants by name were
5 subsequently filed.

7 Defendant Al-Sultan was initially sued in the same complaint as twenty-two
8 other individuals because, given the unique identifier associated with a particular digital
9 copy of *Boyka Undisputed 4* and the timeframe in which the internet protocol address
10 associated with each defendant accessed that digital copy, UN4 alleges that all of the
11 defendants were all part of the same “swarm” of users that reproduced, distributed,
12 displayed, and/or performed the copyrighted work. According to UN4, Al-Sultan and
13 his co-defendants directly or indirectly shared, downloaded, and distributed a single
14 unique copy of *Boyka Undisputed 4* that had been seeded to the torrent network at some
15 undefined point in the past.

19 Al-Sultan initially responded to UN4’s complaint (Dkt. # 49), but subsequently
20 failed to participate in the Rule 26(f) conference or discovery. The Court issued an
21 Order to Show Cause why default should not be entered against Al-Sultan for his failure
22 to participate or respond to prior Court orders. Dkt. #129. Default was entered against
23 him on March 4, 2019. Dkts. #131. UN4 now seeks judgment against Al-Sultan.

26 II. DISCUSSION

27 Federal Rule of Civil Procedure 55(b) authorizes a court to grant default
28 judgment. Prior to entering judgment in defendant’s absence, the Court must determine

1 whether the allegations of a plaintiff's complaint establish his or her liability. Eitel v.
2 McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). The court must accept all well-pled
3 allegations of the complaint as established fact, except allegations related to the amount
4 of damages. TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).
5 Where the alleged facts establish a defendant's liability, the court has discretion, not an
6 obligation, to enter default judgment. Alan Neuman Productions, Inc. v. Albright, 862
7 F.2d 1388, 1392 (9th Cir. 1988). If plaintiff seeks an award of damages, it must provide
8 the Court with evidence to establish the amount. TeleVideo Sys., 826 F.2d at 917-18.
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11 A. Liability Determination.

12 The allegations in UN4's complaint establish Al-Sultan's liability for direct
13 copyright infringement. To establish direct infringement, UN4 must demonstrate
14 ownership of a valid copyright and that Al-Sultan copied "constituent elements of the
15 work that are original." L.A. Printex Indus., Inc. v. Aeropostale, Inc., 676 F.3d 841, 846
16 (9th Cir. 2012) (quoting Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361
17 (1991)). Here, UN4 alleges it owns the exclusive copyright to the motion picture *Boyka*
18 *Undisputed 4* and that Al-Sultan participated in a "swarm" to unlawfully copy and/or
19 distribute the same unique copy of *Boyka Undisputed 4*. These allegations were
20 established by entry of default against Al-Sultan. Accordingly, UN4 has established his
21 liability for direct copyright infringement.
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1 B. Default Judgment is Warranted.

2 Having established liability, plaintiff must also show that default judgment is
3 warranted. Courts often apply the factors listed in Eitel, 782 F.2d at 1471-72, to make
4 this determination. Those factors are:

5 “(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s
6 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money
7 at stake in the action; (5) the possibility of a dispute concerning material
8 facts; (6) whether the default was due to excusable neglect, and (7) the strong
9 policy underlying the Federal Rules of Civil Procedure favoring decisions on
10 the merits.”

11 The majority of these factors weigh in favor of granting default judgment against Al-
12 Sultan. UN4 may be prejudiced without the entry of default judgment as it will be left
13 without a legal remedy. See Landstar Ranger, Inc. v. Parth Enters., Inc., 725 F. Supp.2d
14 916, 920 (C.D. Cal. 2010). UN4’s complaint sufficiently alleges a claim of direct
15 copyright infringement, and Al-Sultan did not present any evidence to the contrary.
16 Additionally, the Court finds there is a low probability that default against Al-Sultan was
17 due to excusable neglect: defendant initially responded and was given ample opportunity
18 to participate in this matter but has apparently chosen not to do so. Finally, although there
19 is a strong policy favoring decisions on the merits, the Court may consider Al-Sultan’s
20 failure to participate and intransigence in the face of Court orders.

21 The Court acknowledges that a dispute concerning the material facts alleged by
22 UN4, including the identity of the alleged infringers, could arise in this case. The Court
23 also acknowledges that the amount at stake may be significant depending on the means
24 of the defendant. UN4 seeks enhanced statutory damages in the amount of at least \$750
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1 along with attorneys' fees of \$1,796 and costs of \$142 from Al-Sultan. Notwithstanding
2 these considerations, the Eitel factors weigh in favor of granting default judgment
3 against defendant.

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5 C. Appropriate Relief.

6 UN4 requests entry of a default judgment against Al-Sultan providing the
7 following three categories of relief: (1) permanent injunctive relief; (2) statutory
8 damages; and (3) attorney's fees and costs. Each category is discussed below.
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10 i. *Permanent Injunctive Relief*

11 Permanent injunctive relief is appropriate. Section 502(a) of Title 17 of the
12 United States Code allows courts to "grant temporary and final injunctions on such
13 terms as it may deem reasonable to prevent or restrain infringement of a copyright." As
14 part of a default judgment, courts may also order the destruction of all copies of a work
15 made or used in violation of a copyright owner's exclusive rights. 17 U.S.C. § 503(b).
16 Given the nature of the BitTorrent protocol and defendant's participation therein, the
17 Court finds defendant possesses the means to continue infringing in the future. MAI
18 Sys. Corp. v. Peak Comput., Inc., 991 F.2d 511, 520 (9th Cir. 1993) (granting
19 permanent injunction where "liability has been established and there is a threat of
20 continuing violations."). Consequently, the Court will issue a permanent injunction
21 enjoining defendant from infringing UN4's rights in *Boyka Undisputed 4* and directing
22 them to destroy all unauthorized copies of *Boyka Undisputed 4*.
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1 ii. *Statutory Damages*

2 Plaintiff requests that Al-Sultan be held jointly and severally liable with other
3 defendants for statutory damages in the amount of at least \$750. For the reasons stated
4 in Dkt. #130, the Court will award UN4 \$750 in statutory damages for the infringements
5 involved in this action, for which all defaulted defendants are jointly and severally
6 liable.
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8 iii. *Attorneys' Fees and Costs*


9 Finally, UN4 asks the Court to award \$1,796 in attorneys' fees and \$142 in costs
10 against Al-Sultan. Pursuant to 17 U.S.C. § 505, the Court "in its discretion may allow
11 the recovery of full costs by or against any party," and "may also award a reasonable
12 attorney's fee to the prevailing party as part of the costs." As discussed in Dkt. #130,
13 allocating 1 hour of attorney time at an hourly rate of \$350 and .8 hours of legal
14 assistant time at an hourly rate of \$145 to compensate UN4 for shared activities related
15 to pleadings, motions, and service documents is appropriate. In addition, Al-Sultan's
16 failure to participate in discovery or to respond to Court orders caused UN4 to incur
17 another \$1,330 in attorney's fees that are appropriately charged to Al-Sultan in this
18 matter. The Court finds that UN4's request for costs is reasonable.
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24 **III. CONCLUSION**

25 The Court, having reviewed the motions for default judgment and the remainder
26 of the record, finds adequate bases for default judgment. Accordingly, the Court hereby
27 finds and ORDERS:
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1. UN4's motion for default judgment is GRANTED.
2. Defendant Al-Sultan is hereby permanently enjoined from infringing UN4's exclusive rights in the motion picture film *Boyka Undisputed 4*, including without limitation by using the Internet to reproduce or copy *Boyka Undisputed 4*, to distribute *Boyka Undisputed 4*, or to make *Boyka Undisputed 4* available for distribution to the public, except pursuant to lawful written license or with the express authority of UN4;
3. To the extent any unauthorized reproduction or copy of *Boyka Undisputed 4* is in defendant's possession or subject to his control, he is directed to destroy it;
4. Al-Sultan is jointly and severally liable along with defendants Kirwan, Penchev, Ramirez, Kuria, Morrison, Lim, Alhegni, Wentz, Gomez, Salzer, and Casses for statutory damages in the amount of \$750;
5. Defendant Mortedha Al-Sultan is individually liable for attorneys' fees in the amount of \$1,796¹ and costs in the amount of \$142.

Dated this 21st day of May, 2019.



Robert S. Lasnik
United States District Judge

¹ This amount includes the \$455 awarded to UN4 during discovery. Dkt. # 126.